POINT IV – DUE TO HUMAN NATURE, THE *PRO SE* PETITIONER MISTAKENLY FAILED TO ASSERT THE CLAIM OF FRAUD, CORRUPTION, AND BRIBERY – PETITIONER SHOULD NOW BE PERMITTED TO ASSERT THESE CLAIMS INSTEAD OF THE INVOLUNTARY WAIVER OF THESE CLAIMS.

The failure of Petitioner to claim the bribery, fraud and corruption apparent throughout this case would constitute excusable neglect. No harm would come to either party by allowing Petitioner to prove the bribery, fraud and corruption claim. If the claim is false, then the doctrine of "no harm – no foul" is applicable but if proven, then appropriate awards for the damages caused should be meted out. The idea or doctrine that Petitioner waived these claims by not raising them in his appeal is erroneous. This waiver may be set aside upon a showing of mistake and/or excusable neglect, meritorious defenses and due diligence in moving to set aside the mistake. F.R.C.P. 1.540(b); *Trans Realty v. Realty World Corporation*, 407 So.2d 1201 (FL 4 DCA 1987). Further, this doctrine that Petitioner waived his claims which the United States Court of Appeals for the Eleventh Circuit quickly identified as cognizable, will be set aside unless the Petitioner's conduct can reasonably be characterized as partaking of **gross** negligence or as constituting a willful and intentional refusal to act. *Somero v. Hendry General Hospital*, 467 So.2d 1103 (FL 4 DCA 1985). Finally, as Courts have recognized that where an action leading to Waiver of a claim results from systems gone array, or any of the foibles of human nature, then upon the timely application accompanied by credible explanation, the matter should be permitted to be heard on the merits. Accordingly, with the

Constitution of the United States all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

I would like this Court to please review this petition based not only because my rights as a worker were violated but because this decision will be of concern to everybody who in the future will claim JUSTICE and for the extent of this claim I think that under the Equal Protection Clause I am being protected in part or in all under the Fourteenth Amendment of the United States Constitution. In the broadest view, the Equal Protection Clause is part of the United States continuing attempt to determine what its professed commitment to the proposition that "all men are created equal" should mean in practice.

POINT V – WORKERS SHOULD GET AND KEEP JOBS BASED ON THEIR ABILITY, NOT AGE.

The Age Discrimination in Employment Act (ADEA) protects people age 40 and over from employment discrimination based on age. The law says that an employer may not fire, refuse to hire, or treat you differently than other employees because of your age. The Age Discrimination in Employment Act (ADEA) is the first defense against age discrimination. There was not any lawful reason – not connected to Petitioner's age – in Mr. Kasher's Decision at

the time that he selected Petitioner Pernett for temporary layoff.

The application of law in Pernett's case relies on two main pieces of evidence: His rights as worker were determined by his age not by his ability to perform his work, which is a direct violation from this act which prohibits discrimination based only on "his old" age. The legislative history and findings recited in the ADEA itself showed an almost exclusive concern that older Americans were being denied opportunities in the workplace based upon unfounded ability to perform.

Finally, Employment Discrimination laws seek to prevent discrimination based on race, sex, religion, national origin, physical disability, and *AGE* by employers. Discriminatory practices include bias in hiring, promotion, job assignment, termination, compensation, and various types of harassment. The main body of this unfair act against Pernett's rights as an "old" employee is surrounded by employment discrimination laws which constitute the federal and state protection by the UNITED STATES OF AMERICA.

I Believe in the American Dream which is the freedom to achieve greatness through hard Work, perseverance and determination, so I ask this Honorable Court to bring back this dream based on my years of experience and hard work to the company.

CONCLUSION

Petitioner respectfully asks the Court to grant this Writ of Certiorari, to reverse and remand the lower Court's decision with directions to award to the Former T.W.A. workers of the Miami station the difference in their seniority rights between the 100% which should have been and the 10% actually given and award Petitioner the sum of $1,000,000 for damages and emotional anguish.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FELIX PERNETT,

Plaintiff-Appellant,

Versus

AMERICAN AIRLINE, INC. TRANSPORT WORKERS UNION, et al.,

Defendants-Appellees.

No. 04-14444
D.C. Docket No.
03-81140-CV-JIC

Appeal from the United States District Court
For the Southern District of Florida
Before BIRCH, DUBINA and BARKETT,
Circuit Judges.

BACKGROUND

Appellant Felix Pernett appeals pro se from the District Court's dismissal with prejudice of his 42 U.S.C. 1983 suit against his employer, American Airlines ("American"), Transport Workers Union ("TWU"), and Richard Kasher, an arbitrator. His complaint claimed that American treated him and the other former Transworld Airlines ("TWA") employees differently than American employees with respect to seniority. He contended that American broke its promise to former TWA employees that they would have jobs, and he was laid off. He further contended that American bribed Kasher to give a binding decision in favor of American regarding the arbitration of the seniority rights of former TWA employees.

The District Court found that Pernett appeared to claim that he was wrongfully temporarily laid off. The Court further found that the essence of the complaint was Pernett's disagreement with the consequences of the seniority system put into place by arbitration under a Railway Labor Act ("RLA") collective bargaining agreement, which was a "minor dispute subject to exclusive remedy through the Board of Adjustment and cannot be brought" in the district court. Consequently, the District Court found that Pernett's claim was preempted by the RLA and dismissed the claim with prejudice as to American, TWU, and Kasher.

On appeal, Pernett argues that the District Court erred in dismissing his complaint because he sought to protect his constitutional, civil, and human rights, as well as his rights as a worker. He contends that American treated the employees of another airline it purchased differently from former TWA employees with regard to recognizing seniority, which violated his equal protection rights. He fails to address the issue of preemption by the RLA.

OPINION

"Subject-matter jurisdiction is a question of law subject to *de novo* review." *Williams v. Best Buy*, 269 F.3d 1316, 1318 (11th Cir. 2001). Issues not argued on appeal are deemed waived. *See Rowe v. Schreiber*, 139 F. 3d 1381, 1382 n. 1 (11th Cir. 1998).

In order to prevail on a civil rights action under § 1983, a plaintiff must show that he or she was deprived of a federal right by a person acting under color of state law. *Patrick v. Floyd Med. Ctr.*, 201 F.3d 1315 (11th Cir. 2000).

> [S]tate action requires *both* and alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," *and* that "the party charged with the deprivation must be a person who may fairly be said to be a state actor".

Id. (Internal citation omitted) (emphasis in original).

Most of the provisions of the RLA have been made applicable to labor relations in the airline industry. *See* 45 U.S.C §181; *Pyles v. United Air Lines*, 79 F.3d 1046, 1049 (11th Cir. 1996).

> The RLA has established a framework for the resolutions of disputes between air carrier and their employees that "grow[] out of grievances, or out of the interpretation or application of agreement concerning rates of pay, rules, or working conditions." The distinguishing feature of such a dispute, termed a "minor dispute," is that "the dispute may be conclusively resolved by interpreting the existing [collective-bargaining] agreement.".

Pyles, 79 F.3d at 1049 (internal citation omitted). Therefore a claim that requires an interpretation of a collective bargaining agreement" is preempted and must be submitted to arbitration before a system board of adjustment". *Id.* At 1050. "Judicial review of Adjustment Board to comply with the requirement of the Railway Labor Act; (2) failure of the Adjustment Board to conform, or confine, itself to matter within the scope of its jurisdiction; and (3) fraud or corruption." *Union Pac. R Co. v. Sheehan*, 439 U.S. 89, 93, 99 S. Ct. 399, 402, 58 L.Ed.2d 354 (1978).

To the extent that Pernett claims that his temporary lay-off was wrongful, we conclude that the district court properly found that his claims were a "minor dispute" preempted by the RLA. *See Pyles*, 79 F.3d at 1049. However, to the extent that Pernett's claim could be seen to challenge the decision by Kasher in his role as the Adjustment Board, the statute has set forth a limited right of judicial review. *See Union*, 439 U.S. at 93, 99 S. Ct. at 402. Although most of Pernett's claims challenging Kasher's decision on the seniority of former TWA employees are not within the limited scope of judicial review, Pernett's claim that American bribed the arbitrator, Kasher, is cognizable as a claim of fraud or corruption, which would permit the court to review the Board's order. *Union*, 439 U.S. at 93, 99 S. Ct. at 402. Nevertheless, because Pernett has failed to raise the bribery claim on appeal, the issue is deemed waived. *See Row*, 139 F.3d at 1382 n.1. Additionally, Pernett's claims-which are against a private company, American, a labor union, TWU, and an arbitrator, Kasher-are not cognizable under § 1983 because he does not allege state action. *See Patrick*, 201 F.3d at 1315. Accordingly, we affirm the judgment of dismissal.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

FELIX PERNETT,

Plaintiff,

Vs

AMERICAN AIRLINES, TRANSPORT WORKERS UNION, AND RICHARD KASHER

Defendants.

No. 03-81140
CIV Docket No.
03-81140-CIV-COHN/SNOW

Motion to appeal the closing of civil case For the Southern District of Florida

NOTICE TO APPEAL

The closing of this case, it surp[illegible]ed me cause I believe that in UNITED STATES OF AMERICA the working decent citizen have a change to explain in court his point of view with facts And should be able to establish what injustice was done not only to him or her but automatically mistreat the balance of the American population. I tired to comply with the Court rules but I guess my try did not satisfy the rules. Perhaps a little coaching will help me to bring about JUSTICE to about 10.000 AMERICAN CITIZENS. Please reopen this case allow Justice to take place one more time this GREAT COUNTRY. MR. Kasher clearly violated the Constitution of the

UNITED STATES OF AMERICA under article IV Section. 1 Amendment XIV Section 1. Also violated the Civil Rights act code (DE 3).

APPENDIX C

IN THE UNITED DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FELIX PERNETT,

Plaintiff,

Versus

AMERICAN AIRLINE, INC. TRANSPORT WORKERS UNION, AND RICHARD KASHER,

Defendants.

No. 03-81140
CIV-COHN/SNOW

Final Order of Dismissal
For the Southern District of Florida
Before James, Circuit Judges.

FINAL ORDER OF DISMISSAL

THIS CAUSE is before the Court upon Defendant, American Airlines', Motion to Dismiss Plaintiff's complaint with Prejudice Pursuant to Fed. R. Civ. P. 12(b) (1) and Fed. R. Civ. P. 12 (b)(5) [DE 15] and Plaintiff's Response to Defendant's Motion to Dismiss [DE 23]. The Court has reviewed the Submissions of the parties, the record, and applicable law.

BACKGROUND

On December 10, 2003, Plaintiff filed his *pro se* Complaint against Defendants, American Airlines ("American"), Transport Workers Union ("TWU"), and Richard Kasher ("Arbitrator"). [DE 1]. On May 7, 2004, the

Court entered an Order to Show Cause for Failure to Comply with Fed. R. Civ. P.A(m) and directed Pernett to either perfect service of process or show good cause why such service was not perfected within 30 days. [DE 3]. On May 18, 2004, Pernett sent a letter to the Court indicating he was not aware that he was responsible for serving process on the Defendant. [DE 4]. The Court deemed Plaintiff's letter a response to the Order to Show Cause. [D5]. On May 19, 2004, the Court issued a Second Order to Show Cause for Failure to Comply with FED. R. Civ. P. 4(M) and directed the Plaintiff to perfect service of process by June 25, 2004. [DE 6]. On June 18, 2004, the Court entered an Order of instructions to *Pro se* Litigant [DE 12]. To date, no return of service is on file for any of the Defendants.

DISCUSSION

A defendant may move to dismiss a complaint if it fails to allege facts sufficient to invoke the court's subject matter jurisdiction. FED R. Civ. P. 12(b) (1). The party invoking jurisdiction bears the burden of producing the necessary facts to establish subject matter jurisdiction. *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994). In evaluating a motion to dismiss for lack of subject-matter jurisdiction, the Court assumes that all factual allegations set forth in the complaint are true. *Haase v. Sessions*, 835 F.2d 902, 906 (D.C Cir. 1987). The Court may also consider any pleadings, affidavits, or other evidentiary materials that are relevant to the issue of subject-matter jurisdiction. *Id.*

As an initial matter, the Court notes that where the plaintiff proceeds *pro se*, the complaint "must be held to

less stringent standards than formal pleadings drafted by lawyers." *Estelle v. Gamble*, 97 S. Ct. 285 292 (1976) (citation omitted). But, at the same times, the court is not to "serve as de facto counsel for a party . . . or to rewrite an otherwise deficient pleading in order to sustain an action." *GJR Investments, Inc. v. County of Escambia*, 132 F. 3d 1359 1369 (11th Cir. 1998).

The essence of Plaintiff Complaint is his disagreement with the consequences of a seniority system put into place by arbitration under a Railway Labor Act collective bargaining agreement wherein the Board of Adjustment was given Jurisdiction to decide issues of seniority rights through interpretation of the governing bargaining agreement.

As a result of the Arbitrator's interpretation of the seniority integration formula established by an earlier award, Pernett was assigned a particular seniority date at American that resulted in his being selected for temporary layoff at his location between February and November 2003. Thus, Plaintiff's grievance is a minor dispute subject to exclusive remedy through the Board of Adjustment and cannot be brought in this Court. *See Pilkington v. United Airlines, Inc.*, 112 F.3d 1532, 1538 (11th Cir. 1997).

ORDERED AND ADJUDGED

Defendant, American Airlines' Motion to Dismiss Plaintiff's Complaint with Prejudice Pursuant to Fed. R. Civ. P. 12(b)(1) is GRANTED for lack of subject matter jurisdictions. claim is preempted by the Railway Labor Act, 45 U.S.C § 184 *et seq*, and is thus DISMISSED WITH

PREJUDICE as to Defendants, American Airlines, Transport Workers Union ("TWU") and Richard Kasher ("Arbitrator").

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(2)

No. 05-570

In The

Supreme Court of the United States

FELIX PERNETT,

Petitioner,

v.

AMERICAN AIRLINES, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR REHEARING

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INTRODUCTION

On January 9, 2006 The Supreme Court of the United States, denied Felix Pernett's petition for a writ of certiorari. According with the manual rules, relocation to another station without having one's occupational seniority reduced-Articles 10d/14a of the "system protection", is the essence of this case. Based on the fact that BRIBERY has not been determined by the Court in this case, I am disappointed in the fact that neither of the Courts in which I have presented my case has been able to let me present evidence that will show that Kasher's decision on the seniority of former TWA employees violates the constitutional right of freedom of movement. His decision is simply taking care of a specific group of employees and not for all the American Airlines Staff.

SUMMARY OF NATURE OF CASE AND PRIOR PROCEEDINGS

The procedural history is set forth in detail in the Petition for Certiorari. Felix Pernett's Petition focuses on the context of American's acquisition of TWA assets following an agreement for the integration of seniority credit in an "unfair" and "non-equitable" manner. The two companies decided to name a mediator to hear the issue of employee benefits. The job of the mediator was to help reach middle ground under the RLA. In essence, mediator Mr. Kasher gave a binding decision in favor of American Airlines and against former TWA employees, which is my case.

I entered an appeal with the UNITED STATES COURT OF APPEALS for the Eleventh Circuit on August 30, 2004. Final decision was issued on March 21, 2005.

I was granted an extension of time to file the instant Petition on August 19, 2005 until and including September 16, 2005 which was done but returned to me by the Office of the Clerk with directions to resubmit with a proper 'Basis of Jurisdiction in this Court and other' section.

On January 9, 2006 The Supreme Court of the United States, denied Felix Pernett's petition for a writ of certiorari.

Kasher's decision and its consequences are, with no doubt, that American Airlines was the only beneficiary in this agreement, leading to the only conclusion that there was a misconduct and bribery from that Mediator.

It is the Appellant's opinion that this arrangement may be illegal as it results in original AA employees benefiting at the expense of former TWA employees!!! Arbitrator Kasher cautioned against such policies, and he made it clear that his role was to INTEGRATE former TWA employees not SEGREGATE AND DISCRIMINATE.

PETITION FOR REHEARING

Pursuant to the Supreme Court Rule 44.2, Petitioner FELIX PERNETT, respectfully petitions the Court for REHEARING. The Petitioner based this petition in his constitutional rights Under the United States Constitution, which guarantees equal protection of the laws by the Fourteenth Amendment. The Fourteenth Amendment further entitles me to my due process rights and opportunity to be heard.

I would like to demonstrate that the decision of Mr. Kasher and its consequences make with no doubt, that American Airlines was the only beneficiary in this agreement, and that there was a misconduct and bribery from that Mediator.

REASONS FOR GRANTING THE PETITION

A. EMPLOYEES AWARDED 100% SENIORITY AND SENIORITY REDUCED DUE TO A VOLUNTARY TRANSFER - AWARDED A BIDDED VACANCY

By this argument, I the Petitioner, as a United States Citizen, I am *sui juris* and free to travel anywhere in this Country. This case is based upon a United States Court of Appeals for the Eleventh Circuit decision which is being appealed based on a denial of a fundamental, unalienable right to travel, the bias and discrimination at issue in this case should be visited de novo and judicially determined by this Honorable Court.

After Kasher's decision in 2002 my seniority rights were reduced due to the new "RULES" which suggest that my occupational seniority can be reduced if I transfer to another station. However, any attempt to reduce one's seniority date violates Articles 10d, 14a, and 16a.

B. PETITIONER'S RIGHTS WERE ARBITRARILY STRIPPED BECAUSE OF MR. KASHER'S DECISION.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §621 is the first defense against age discrimination. There was not any lawful reason – not connected to

Petitioner's age – in Mr. Kasher Decision at the time that he selected Petitioner Pernett for temporary layoff.

Kasher's unfair act against Pernett's rights as an "old" employee is surrounded by employment discrimination laws which constitute the federal and state protection by the UNITED STATES OF AMERICA.

C. PETITIONER EQUAL RIGHTS AND JUSTICE OF WHAT HAS BEEN EARNED

Given the principle of equal citizenship, discrimination in the sense of the denial of civil rights is an injustice that denies certain citizens the rights to which they are entitled. Civil Rights Act of 1964, 42 U.S.C. §1981 (1999). With Kasher's decision it is obvious that the principle of discrimination became the sense of differential treatment.

Once again this differential treatment disadvantages not only Petitioner but thousands of people based on their AGE, or another paradigmatic civil rights category. The common view is that such differential treatment is (at least *prima facie*) an injustice that violates the basic rights of the individual.

In other words, Petitioner's view is that it is his civil right to not be treated disadvantageously, have JUSTICE and be heard within the Jurisdiction of this Honorable Court.

My point of the common view is that the injustice of this binding agreement regarding the integrations of seniority credit, establishes clearly the discrimination and unexplained favoritism that Kasher makes in favor of American Airlines. Shouldn't this Court like to hear and know why he made this ruling?

What is required is an explanation that shows why such discrimination is an INJUSTICE. There is no plausibility to the claim that anyone has a right to this treatment.

CONCLUSION

This Court should grant this petition and reverse the order denying the petition for a writ of certiorari in light of my Constitutional and civil rights.

Respectfully submitted, this 31st day of January, 2006.

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CERTIFICATE OF PETITIONER

Undersigned pro se petitioner, certifies that this petition for Review is restricted to the grounds specified in this Court's Rule 44.2 and that it is presented in good faith and nor for delay.

FELIX PERNETT
Pro Se